IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2145 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASMUKH RAMESHCHANDRA SHAH

Versus

COMMISSIONER OF POLICE FOR CITY OF AHMEDABAD

Appearance:

1. Special Civil Application No. 2145 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR RC KODEKAR AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/07/2003

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu who has been detained under the

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 15/2/2003 passed by the Commissioner of Police, Ahmedabad City and he has been declared as "a person involved in the activities of immoral traffic."

2. I have heard learned counsel for the petitioner and learned AGP and also perused the material on record. Learned AGP tenders reply on behalf of detaining authority. The same is ordered to be taken on record. According to learned counsel for the petitioner, the detaining authority has passed the detention order relying upon the solitary offence registered against the detenu before the DCB Police Station, Ahmedabad under the provisions of Suppression of Immoral Traffic in Women and Girls Act and statements of two witnesses. The learned counsel for the petitioner has further submitted that on the date of passing detention order, the detenu was in judicial custody, and this aspect would have been considered by the detaining authority while passing the detention order. In this connection, he has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

> "Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

3. It appears that on the date of passing the detention order, the detenu was in judicial custody, hence in view of the above judgement rendered in the case of Amritlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside.

4. In view of the abvoe, the petition is allowed. The impugned order of detention dated 15/2/2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not

required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik